Serial No. 10/079,865

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SPEEDY DELIVERY OF
COMMUNICATIONS TO A VEHICLE

Group Art Unit: 2144

Examiner: Peling Andy Shaw

Attorney Docket No. GP-302051-OST-ALS

APPEAL BRIEF

Board of Patent Appeals and Interference
US Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

On July 27, 2007, Appellant filed a Notice of Appeal of a Final Rejection in the Final Office Action of April 27, 2007. The appeal covers claims 23-44 which were rejected on prior art grounds.

Please charge the requisite fee for filing this Appeal Brief to Deposit Account No. 07-0960. Also, please charge any other required fees or credit any excess to Deposit Account No. 07-0960.

(i) Real Party in Interest

 The real party in interest is the assignee of the applicant inventor who assigned all of his right, title and interest to General Motors Corporation, a Michigan corporation, having its principal place of business at 300 Renaissance Center, Detroit, Michigan 48265-3000.

(ii) Related Appeals and Interferences

 There are no other appeals and/or interferences known to Appellant, his assignee, and/or legal representatives that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

(iii) Status of Claims

 Claims 1-22 have previously been cancelled. Claims 23-44 remain in the application and all currently stand rejected on the basis of prior art. The rejection of each of these claims 23-44 is being appealed.

 The application does not contain any other claims.

(iv) Status of Amendments

 No amendments have been filed and subsequent to the Final Office Action.

(v) Summary of Claimed Subject Matter

In accordance with 37 CFR 41.37(c)(1)(v), a concise explanation is provided below of subject matter defined in each of the independent claims involved in this appeal, with reference to the specification by page and line numbers and to the drawings by reference characters. Also in accordance with 37 CFR 41.37(c)(1)(v), for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function as permitted by 35 U.S.C. 112, sixth paragraph, is identified and the structure, material, or acts described in the specification as corresponding to each claimed function is set forth with reference to the specification by page and line numbers, and to the drawings by reference characters.

The disclosed embodiment of the invention variously recited in the claims involves a method for delivering a communication 12 for a customer 16 from a third party sender 14. The method may be implemented via a system 10 including a server 18 and a client vehicle communication unit (VCU) 20 installed in a vehicle 22. (Fig. 4; Page 3, lines 14-17.) In general, the system 10 includes hardware and/or software for establishing a connection between the server 18 and the VCU 20 and for acquiring an ignition status of the vehicle 22. (Fig. 4; Page 3, line 17-22.) The system 10 also includes hardware and/or software for storing the communication 12 and delivering communication to the customer 16 once the customer is available. (Fig. 1; Page 3, lines 23-29.)

System 10 can be used to carry out the claim 23 method for notifying a customer of a message for delivery via the client VCU 20 installed in the customer's vehicle 22. The method includes the steps of establishing a connection between server 18 and client VCU 20 (Figs. 1, 1A; Page 5, lines 1-7), sending a query to the client VCU 20 from the server 18 for an indication of whether the customer 16 is available in the vehicle 22 for receiving the message (Figs. 1, 1B; Page 6, lines 1-8), and sending a message to the client VCU 20 for delivery to the customer 16 if the server 18 receives the indication that the customer is available. (Figs. 1, 1C; Page 7, lines 14-17.) If the server 18 does not receive the indication that the customer 16 is available for receiving the message, then any one or more of the following are performed: i) sending a failed delivery message to the client VCU 20; (Fig. 1D; Page 10, lines 9-15.) ii) sending the message to the client for storage on the client VCU 20; (Fig. 3; Page 12, lines 6-11.) or iii) retrying

delivery of the message to the client VCU 20 at a later time after a time interval. (Fig. 2; Page 11, lines 12-18.)

If the server 18 fails to receive the indication that the customer 16 is available in response to previous queries, a query may be periodically sent to the client VCU 20. (Fig. 2; Page 11, lines 12-15.) The method may also include annunciating to the customer 16 the type of message available for delivery if the server 18 receives the indication that the customer 16 is available. (Fig. 1C; Page 7, lines 13-23.) A message may be stored for later annunciation to the customer 16 on the client VCU 20 upon the server acquiring an IGNITION OFF status. (Fig. 1D, Page 10, lines 16-22.) A code may be sent to the client VCU 20 from the server 18 representative of the message for later annunciation. (Fig. 1C, Page 7, lines 13-17.)

The system 10 can also be used to carry out the claim 32 method for delivering a message for customer 16 from server 18 to client VCU 20 installed in the customer's vehicle 22. The method includes the steps of establishing a connection between a server 18 and the client VCU 20 (Figs. 1, 1A; Page 5, lines 1-7) and sending a query to the client VCU 20 from the server 18 for an ignition status as an indication of whether the customer 16 is available in the vehicle 22 for receiving the message. (Figs. 1, 1B; Page 6, lines 1-8.) The query is re-sent to the client VCU 20 from the server 18 for an ignition status if no ignition status is returned from the client VCU 20 to the server 18. (Fig. 1D; Page 10, lines 1-6.) If the server 18 receives an ignition status indicating that the customer 16 is available, then the method annunciates to the customer 16 that a message is available for delivery. (Fig. 1C; Page 7, lines 13-21.)

The method may also include the step of storing a message for later annunciation to the customer 16 on the client VCU 20 upon the server 18 acquiring an IGNITION OFF. (Fig. 1D, Page 10, lines 16-22.) A code may be sent to the client VCU 20 from the server 18 representative of the message for later annunciation. (Fig. 1C, Page 7, lines 13-17.)

The system 10 can additionally be used to carry out the claim 42 method for notifying customer 16 of a message available for delivery via client VCU 20 installed in the customer's vehicle 22. The method includes the steps of attempting to establish a connection between server 18 and the client VCU 20. (Figs. 1, 1A; Page 5, lines 1-7.) If the connection was not established, then performing any one or more of retrying to establish a connection between the

server 18 and the client VCU 20 (Fig. 1A; Page 5, lines 19-23), or storing a failed delivery message. (Fig. 1D; Page 10, lines 9-15.)

If the connection between the server 18 and the client VCU 20 is established, then a query is sent to the client VCU 20 from the server 18 for an ignition status as an indication of whether the customer is available in the vehicle for receiving the message. (Figs. 1, 1B; Page 6, lines 1-8.) If the server receives an ignition status indicating that the customer is available, then a message is sent to the client VCU for delivery to the customer. (Fig. 3; Page 12, lines 8-14.)

Although the Appellants have provided the summary of claimed subject matter with references to specific embodiments of the invention to comply with the requirements set forth in the relevant provisions of 37 C.F.R. 41.37(c)(1), this summary has been provided to aid the Board in evaluating the appeal and is not intended to limit the meaning or definition of any terms in the claims.

(vi) Grounds of Rejection to be Reviewed on Appeal

       The first issue is whether the subject matter of claims 23-27, 29-35, 37-38, and 40-44 is anticipated under 35 U.S.C. § 102(e) by the disclosure of U.S. Publication No. 2003/0103599 to Jijina et al. (Jijina).

       The second issue is whether the subject matter of claims 23, 24, 26, 28, 30, 32, 36, and 39 is unpatentable under 35 U.S.C. § 103(a) as being obvious over U.S. Publication No. 2002/0128000 do Nascimento, JR. (Nascimento) in view of U.S. Publication No. 2002/0042266 to Heyward et al. (Heyward).

(vii) Argument

Rejection Under 35 U. S. C. § 102(e)

Claims 23-27, 29-35, 37-38, and 40-44 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Jijina. The rejection is respectfully traversed for the reasons discussed below.

Claims 23-25, 27, and 29

Independent claim 23 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Jijina. Dependent claims 24, 25, 27, and 29 also stand rejected on this same basis and, for purposes of appeal, the patentability of these dependent claims is to be considered on the same basis as that of claim 23.

Claim 23 recites a method for notifying a customer of a message available for delivery via a client vehicle communication unit (VCU). The claimed method is as follows. A query is sent from a server to a client VCU for an indication of whether the customer is available in a vehicle for receiving the message. If the server receives an indication that the customer is available, then the message is sent to the client VCU for delivery to the customer. But, if the server does not receive the indication that the customer is available for receiving the message, then any one or more of the following is performed:

i) sending a failed delivery message to the client VCU,

ii) sending the message to the client for storage on the client VCU, or

iii) retrying delivery of the message to the client VCU at a later time after a time interval. This enables the server to determine whether a customer is available to receive a message, and if not, then provides a strategy for notifying the customer that a message is available for the customer.

**Jijina Does Not Disclose Querying a Client VCU from a Server for an Indication of the Availability of the Customer for Receiving a Message**

Jijina does not teach or suggest sending a query from a server to a client VCU for an indication of whether the customer is available in a vehicle for receiving a message. The

Examiner cited paragraph 4 of Jijina as disclosing this limitation. But paragraph [0004] does not disclose sending a query to the client VCU from the server. Rather, paragraph [0004] merely states that a vehicle phone answers incoming calls when the vehicle ignition is on, or when the VCU is awake. The Examiner's analysis seems to be that, since (1) within the scope of Applicants' claim 23, the "indication of whether the customer is available in the vehicle" can be the ignition status (see, e.g., claim 24), and (2) the prior art system described in paragraph [0004] of Jijina answers incoming calls when the ignition is on, that therefore Jijina discloses the claim 23 step of "sending a query from a server to a client VCU for an indication of whether the customer is available in a vehicle for receiving a message." This analysis is flawed because in Jijina's paragraph [0004], the mere placing of a voice or data call to the vehicle is not and cannot be used as a "query to the client VCU [] for an indication of" ignition status or any other indicator of availability of the customer. Rather, if the call is answered, all that the call originator knows is that the ignition might be on. It could also be off, but with the VCU in an awake state. Thus, not only does Jijina's paragraph [0004] nowhere state that the vehicle is queried by the server as to ignition status or any other indicator of the presence of the customer, but the mere answering of a received call by the vehicle cannot perform this function, since that paragraph [0004] expressly states that the call will be answered if the VCU is awake in a DRx cycle (which typically, if not universally, occurs while the vehicle ignition is off). Thus, answering of the call does <u>not</u> equate to an indication of ignition status or the availability of the customer for receiving a message. Accordingly, this limitation of claim 23 has not been shown to be disclosed by Jijina.

Jijina Does Not Disclose Sending a Message to the Client VCU if the Server Receives an Indication that the Customer is Available

Since, as discussed above, Jijina does not involve querying for or receiving an indication of whether the customer is available at the vehicle to receive a message, it does not perform claim 23 step of "sending a message to the client VCU for delivery to the customer if the server receives the indication that the customer is available." Again, in Jijina, the calling entity (which may not even be a server, but may be a human caller as shown in Jijina's drawings) does not receive ignition status or any other indication of customer availability at the vehicle.

Jijina Does Not Disclose the Delivery Steps of Claim 23 if the Server Does Not Receive Indication that the Customer is Available

Jijina also does not disclose i) sending a failed delivery message to the client VCU; ii) sending the message to the client for storage on the client VCU; or iii) retrying delivery of the message at a later time after a time interval if the server does not receive the indication that the customer is *available* for receiving the message. The Examiner cited paragraph [0007] of Jijina as disclosing these limitations. But Jijina does not disclose *any* of the limitations (i), (ii), or (iii) above. The cited sections of Jijina merely disclose that a call-forwarding module will transfer voice calls to a voice mail module of a wireless network if the forwarding module cannot ascertain that a vehicle phone answered a call within a predefined period. These sections do not disclose sending a failed delivery message to the client VCU or retrying delivery of a message at a later time as recited in limitations (i) or (iii) of claim 23.

Regarding limitation (ii), the cited sections of Jijina do not disclose sending the *message* to the client *for storage on the client VCU.* Rather, paragraph [0007] teaches that a voice call is transferred to a voice mail module. Jijina teaches that the voice mail module is part of the wireless network rather than part of the vehicle phone. (Jijina; Page 1, Paragraph [0005].) As such, Jijina teaches that the voice call is forwarded to the wireless network when the call is not answered rather than to the vehicle phone. Although paragraph [0024] discloses that the caller may leave a message at the voice mail module, it does not disclose that the message is sent to the vehicle phone for storage on the vehicle phone. Therefore, the cited references in Jijina do not disclose sending a message to a client for storage on a client VCU. The rejection of claim 23 over Jijina should therefore be allowed because Jijina does not disclose all of the claimed limitations.

Accordingly, Applicant respectfully submits that the subject matter of claim 23 is not anticipated by Jijina. Thus, the rejection of this claim and dependent claims 24-27 and 29-31 should be overturned.

Dependent Claim 26

Claim 26 is dependent from claim 23 and should be allowed therewith. Claim 26 is also separately patentable in that it recites the step of *annunciating to the customer the type of message available for delivery to the customer*.

The Examiner has relied on two teachings in Jijina to disclose the limitations of claim 26. First, Jijina discloses at paragraphs [0010] and [0023] providing fake rings at a VCU when a call is forwarded to the VCU. But the fake rings do not annunciate the type of message available to delivery to the customer because, according to the teaching in Jijina, the caller has not yet left a message. Rather, the caller may leave a message at a voice portal module only after the subscriber fails to answer the fake rings. (Jijina; Page 2, Paragraph [0023].)

Second, the Examiner also relies on Jijina's disclosure that the voice portal module announces to the caller that their voice call has been forwarded to the vehicle phone in paragraph [0023]. But the announcement in Jijina is made to the *caller* and *not the customer* in the vehicle. Therefore, because Jijina does not disclose annunciating to the customer the type of message available for delivery to the customer, claim 26 is patentable over Jijina. Accordingly, Applicant respectfully submits that claim 26 is not anticipated by Jijina.

Dependent Claim 30

Claim 30 depends from claim 23 and should be allowed therewith. Claim 30 is also separately patentable in that it recites the step of storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status.

As discussed above, Jijina does not disclose the server acquiring an ignition status. Moreover, as discussed above, Jijina does not disclose storing a message on the client VCU. Therefore, claim 30 is patentable over Jijina because Jijina does not disclose storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status.

Accordingly, Applicant respectfully submits that claim 30 is not anticipated by Jijina.

Dependent Claim 31

Claim 31 depends from dependent claim 30 and ultimately from independent claim 23 and should be allowed therewith on the bases discussed above. Claim 31 is also separately patentable in that it recites the step of "sending a code to the client VCU from the server representative of the message for later annunciation."

The Examiner cited paragraph [0004] as disclosing this limitation. But paragraph [0004] merely discloses receiving data calls and not the specific limitations of claim 31. The cited reference does not disclose sending a code representative of the data call for later annunciation. Moreover, in the Office Action dated 4/27/07, the Examiner stated on page 11, paragraph f that the "code" limitation is "an implementation of how functions would be achieved." The Examiner relied on the rejection for the annunciating step of claim 26 for the rejection of claim 31. But as discussed above in relation to claim 26, Jijina does not disclose the annunciating step. Moreover, the Examiner has ignored the specific limitations of claim 31. Claim 26 recites the step of annunciating the type of message available for delivery to the user. Claim 31, in contrast, recites a specific step of sending a code representative of the message to the client VCU. Claim 31 is patentable over Jijina because Jijina does not disclose sending a code to the client VCU from the server representative of the message for later annunciation. Accordingly, Applicant respectfully submits that claim 31 is not anticipated by Jijina.

Claims 32-35, 37, 38, 40, and 41

Independent claim 32 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Jijina. Dependent claims 33-35, 40, and 41 also stand rejected on this same basis and, for purposes of appeal, the patentability of these dependent claims is to be considered on the same basis as that of claim 32.

Independent claim 32 recites a method wherein a query is sent from a server to a client VCU for an ignition status. The query is re-sent to the client VCU from the server for the ignition status if no ignition status is returned. The method also comprises annunciating to the customer that a message is available for delivery if the server receives the ignition status indicating that the customer is available.

As discussed above in connection with claim 23, Jijina does not teach sending a query from a server to a client VCU to obtain an ignition status, nor in Jijina does the act of answering a call to the vehicle equate to providing an indication of ignition status.

The Examiner argued in paragraph g of page 11, that because the vehicle phone in Jijina answers voice calls when the ignition is on, that the status of the ignition is thus made known to the call initiator or server. But, as discussed above in connection with claim 23, the vehicle also answers when the ignition is off, but the VCU is awake in a DRx cycle. Thus, again, the mere act of answering the call does not tell the calling entity whether or not the vehicle ignition is on. The Examiner also implies that the ignition status is known to the server because the VCU must periodically try to connect to the server when waking in the DRx cycle. This contention by the Examiner is flawed because it assumes without any supporting evidence that the VCU connects to a server (that requests ignition status) when the VCU wakes up, as opposed to simply registering with a base station or mobile switching center. For all of these reasons, this limitation is not disclosed by Jijina.

Jijina Does Not Disclose Re-Sending The Query

Claim 32 also calls for *re-sending the query to the client VCU from the server for an ignition status if no ignition status is returned from the client VCU to the server.* Jijina does not disclose re-sending the query because, as discussed above, the cited portions of Jijina do not disclose sending a query to the client from the server. Therefore, this limitation is not disclosed by Jijina.

Jijina Does Not Disclose Annunciating That A Message Is Available If Server Receives An Ignition Status That The Customer Is Available

Like claim 26, claim 32 additionally calls for *annunciating to the customer that a message is available for delivery if the server receives an ignition status indicating that the customer is available.* Therefore, for reasons similar to some of those discussed above in conjunction with claim 26, this limitation is not disclosed by Jijina.

Accordingly, Applicant respectfully submits that independent claim 32 is not anticipated by Jijina. Claims 33-35 and 37-41 each ultimately depend from claim 32 and should be allowed therewith.

Dependent Claim 37

Claim 37 ultimately depends from claim 32 and should be allowed therewith. Claim 37 is also separately patentable in that it, similarly to claim 30, calls for *storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status*. Therefore, for reasons similar to some of those discussed above in conjunction with claim 30, this limitation is not disclosed by Jijina.

Dependent Claim 38

Claim 38 ultimately depends from claims 32 and 37 and should be allowed therewith on the bases discussed above. Claim 38 is also separately patentable in that it calls for, similarly to claim 31, *sending a code to the client from the server representative of the message for later annunciation*. As explained for claim 31, Jijina does not send a code from the server to the client VCU representative of a message for later annunciation. Therefore, for reasons similar to some of those discussed above in conjunction with claim 31, this limitation is not disclosed by Jijina.

Claims 42-44

Independent claim 42 stands rejected under 35 U.S.C. § 102(e) as being anticipated by Jijina. Dependent claims 43 and 44 also stand rejected on this same basis and, for purposes of appeal, the patentability of these dependent claims is to be considered on the same basis as that of claim 42.

The Examiner has asserted that claim 42 is of the same scope as claim 23 (Office Action dated 4/27/07; P. 4, Par. k) and has not shown where the specific limitations of independent claim 42 are taught in the prior art. Claim 42 recites several limitations not found in the prior art nor in claim 23.

Claim 42 recites, *inter alia*, a method in which a connection is established between a server and a client VCU, and if the connection is not established, then performing any one or more of the following:

      i)   retrying to establish a connection between the server and the client VCU; or

      ii)   storing a failed delivery message.

If the connection between the server and the client VCU is established, then a query is sent to the client VCU from the server for an ignition status as an indication of whether the customer is available in the vehicle for receiving the message. If the server receives an ignition status indicating that the customer is available, then a message is sent to the client VCU for delivery to the customer.

Jijina does not disclose "*retrying to establish a connection between the server and the client VCU*" or "*storing a failed delivery message*" if an initial connection is not established between the server and the client VCU as recited in claim 42. Rather, Jijina merely discloses that the vehicle phone answers incoming calls when the ignition is on or when the VCU is awake. But the cited portions in Jijina do not disclose retrying to establish a connection between a server and the VCU if an initial connection is not established. Nor does Jijina disclose storing a failed delivery message if the ignition is not on or the VCU is not awake. Therefore, Jijina does not disclose all of the limitations of claim 42 because Jijina does not disclose retrying to establish a connection between the server and the client VCU or storing a failed delivery message if the initial connection is not established.

Additionally, Jijina does not disclose *sending a query to the client VCU from the server for an ignition status*. This limitation is similar to claim 23. Therefore, for reasons similar to some of those discussed above in conjunction with claim 23, this limitation is neither disclosed nor suggested in Jijina.

Accordingly, Applicant respectfully submits that independent claim 42 is not anticipated or rendered obvious by Jijina. Claims 43-44 each ultimately depend from claim 42 and should be allowed therewith.

Conclusion for 102(e) Rejections

In view of the foregoing, Appellant respectfully submits that the rejections of claims 23-27, 29-35, 37-38, and 40-44 as being anticipated by Jijina are improper and should be overturned. The Examiner has continually rejected these claims using the background of another General Motors patent. The Examiner has responded to each argument, but the Examiner cites portions of Jijina that do not satisfy the specific claim limitations.

For example, the Examiner cites Jijina as teaching delivery of a voice message for claim 23 when claim 23 clearly recites that the message is delivered to the client VCU upon the occurrence of specific conditions. The Examiner ignores the specific claim limitations. Similarly, in paragraph b on page 9 on the last Office Action, the Examiner cites Jijina as disclosing that a VCU is operable to wake up at regular intervals and the VCU answers calls when the ignition is on. But the Examiner glosses over the specific limitation of *sending a query from the server to the client VCU* recited in the claims. A VCU that periodically wakes up or that answers a call when the ignition is on as taught in Jijina, does not teach or suggest sending a query from a server to the VCU, and as such, the Examiner ignored the specifics of the claimed limitation.

Likewise, in paragraphs c and d on pages 9 and 10 of the last Office Action, the Examiner cited paragraph [0007] of Jijina as reciting one of the limitations of claim 23 when no indication is received that the customer is available. The Examiner implies that paragraph [0007] of Jijina ("transferring a voice call to voice mail module") satisfies limitation (ii) of claim 23 "sending the message to the client for storage on the client VCU." But the Examiner ignored the teaching of Jijina that the voice mail module is part of the wireless network and not at the vehicle or the VCU. (Jijina; P. 1, Par. [0005].)

The Examiner further argues in paragraph d that Jijina's voice mail module could satisfy limitation (ii) in claim 23 because it works just like an "answering service or answering machine." Again, the Examiner has ignored the claim limitations and teachings in the pending application. Applicants' are claiming a strategy for handling voice messages by determining if a customer is available, and if not, where to store the voice message, and how to notify the customer that a message is available for their retrieval. In contrast, Jijina is focused on how to

forward incoming calls and handling the calls so that the caller may leave a message if the forwarding call is not answered. Jijina does not expand upon how to route the message to the client VCU or notify the customer that the message is available for retrieval.

In paragraph f on page 11 of the Final Office Action, Examiner ignores the specific limitation of claim 31 of *sending a code to the client VCU representative of the message for later retrieval*, a limitation that is not shown in the prior art. Instead, Examiner argues that the "term 'code' seems to be an implementation of how function would be achieved." (Final Office Action; P. 11, Par. f.) But in order for claim 31 to be anticipated by the prior art under 35 U.S.C. § 102, "it is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 U.S.P.Q. 2d 1461, 1462 (BPAI 1990). The limitation of claim 31 is an additional step to the method of claim 30, and ultimately of claim 23. The additional step of dependent claim 31 is not found in the prior art, nor has the Examiner asserted that it is. Therefore, Applicants have traversed the § 102 rejection of claim 31.

In paragraph g on page 11 of the Final Office Action, Examiner argues the Jijina discloses the limitations of independent claims 23 and 32 of *sending a query to the client VCU from the server for an ignitions status as an indication of whether the customer is available in the vehicle for receiving a message*. Examiner argues that because Jijina discloses that the vehicle phone is answered whenever the ignition is on or when the VCU is awake, that this discloses "sending a query." But the teaching in Jijina merely teaches that the vehicle phone answers calls whenever it is on. The vehicle phone is on when the ignition is on, or when the VCU is awake during DRx cycles even when the ignition is off. In contrast, the purpose of sending the query from the server to the client VCU in claims 23 and 32 is to determine the whether the customer is available. If the vehicle phone answers when no one is in the vehicle, such as when the ignition is off and the VCU is in the awake cycle (as would happen in Jijina), the server would not have received an indication of whether the customer is available in the vehicle. Therefore, the Jijina does not teach the limitations of independent claims 23 and 32.

For all of these reasons, the § 102(e) rejection of claims 23-27, 29-35, 37, 38, and 40-44 should be reversed.

Rejection Under 35 U. S. C. § 103(a)

Claims 23, 24, 26, 28, 30, 32, 36, and 39 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nascimento in view of Heyward. The rejection is traversed for the reasons discussed below.

In the last Office Action, the Examiner combined the teachings of Nascimento with those of Heyward. Nascimento discloses a system to determine services available to a mobile communication unit based on the unit's location, speed, and the time of day. Based on local traffic laws, the system may prevent calls from being routed to the mobile unit to prevent the unit from being used while the vehicle is being driven.

Heyward discloses an intelligent mobile unit system for monitoring the locations of a multitude of mobile units using Global Positioning System (GPS) technology. The system is programmed to report the position of the units only when required and enable the host to provide current locations of the units to third parties without requesting information from the mobile unit. This is accomplished through programming the mobile units to transmit a status report upon a predetermined change in status to make efficient use of a wireless network.

Claims 23 and 24

Neither Nascimento nor Heyward teach or suggest all of the elements of claim 23. The cited references in Nascimento and Heyward do not disclose what happens if the server does not receive an indication that the customer is available for receiving messages. Claim 23 recites three limitations not found in the cited references:

i) sending a failed delivery message to the client VCU,

ii) sending the message to the client for storage on the client VCU, or

iii) retrying delivery of the message at a later time after a time interval.

In the Final Office Action, the Examiner stated that Nascimento does not show limitations (i), (ii), or (iii). (Final Office Action; P. 6; Par. a.) The Examiner, instead, cited paragraph 49 of Heyward for "re-transmission when radio coverage becomes available." (*id.*) The teachings of the cited portion of Heyward does not teach delivering, or attempting to deliver

a message *to* the mobile unit. Rather, the cited portion of Heyward teaches transmitting a data report *from the vehicle* to the host and does not teach or suggest delivering a message *from the host* to the vehicle. Limitation (i) requires sending a failed delivery message to the client VCU. Limitation (ii) requires sending the message to the client for storage on the client VCU. Limitation (iii) requires retrying delivery of the message to the client VCU. Nothing in the cited paragraph teaches or suggests sending or delivering a message *to the mobile unit.* Instead, the cited paragraph teaches the mobile unit sending data *to the host.* Therefore, the cited references fail to teach or suggest all of the claimed limitation of claim 23.

Accordingly, Applicant respectfully submits that the subject matter of claim 23 is obvious over Examiner's proposed combination of Nascimento and Heyward. Furthermore, none of the other prior art of record makes up for this deficiency of Examiner's proposed combination. Accordingly, claim 23 defines subject matter patentable over the prior art of record. Claim 24 each ultimately depend from claim 23 and should be allowed therewith.

Dependent Claim 26

Claim 26 is dependent from claim 23 and should be allowed therewith. Claim 26 is also separately patentable in that it recites the step of *annunciating to the customer the type of message available for delivery.*

The Examiner cited paragraph 121 of Nascimento as disclosing VCM 108 causes audio inquiries to be made through a speaker of the vehicle or displays video inquiries on the display. But the reference does not teach or suggest annunciation the type of message available for delivery. Rather, the cited paragraph teaches that the VCM can be used to query the user for Remote Mobile Modules (RMMs) such as PDAs and cellular phones that are present for use with the VCM. The VCM merely prompts the user (via audio or video prompts) to configure the VCM by selecting which devices to use with the VCM for which services. The audio and video inquiries do not involve annunciating *messages available for delivery* to the customer. For these reasons, the cited reference does not teach or suggest the limitations of claim 26.

Therefore, because the proposed combination of Nascimento and Heyward does not disclose annunciating to the customer the type of message available for delivery, claim 26 is

patentable over the prior art. Accordingly, Applicant respectfully submits that claim 26 is not rendered obvious by the proposed combination of Nascimento and Heyward.

Dependent Claim 28

Claim 28 is dependent from claim 23 and should be allowed therewith. Claim 28 is also separately patentable in that it recites the step of *periodically sending a query to the client VCU from the server if the server fails to receive the indication that the customer is available in response to previous queries*. The Examiner cited paragraph 119 of Nascimento as disclosing a periodic inquiry. But the claim limitation calls for a query sent from the server to the client VCU. In contrast, the cited reference teaches a Vehicle Control Module (VCM) in a vehicle sending queries to users in a vehicle. The inquiry does not indicate the availability of a customer, but rather, which Remote Mobile Modules (RMMs), such as PDAs and cellular phones, the user would like to use with the VCM. Moreover, the queries are in response to failure of a server to receive an indication that the customer is available. Therefore, the cited reference does not teach or suggest periodically sending a query to the client VCU from the server *if the server fails to receive indication that the customer is available* in response to *previous inquiries*.

Therefore, because the proposed combination of Nascimento and Heyward does not teach or render obvious all of the limitations of claim 28, claim 28 is patentable over the prior art. Accordingly, Applicant respectfully submits that claim 28 is not rendered obvious by the proposed combination of Nascimento and Heyward.

Dependent Claim 30

Claim 30 is dependent from claim 23 and should be allowed therewith. Claim 30 is also separately patentable in that it recites the step of *storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status*. The Examiner cited paragraph 47 of Nascimento as disclosing these limitations. But paragraph 47 does not disclose storing a message on the client VCU upon the server receiving an ignition off status. Rather, paragraph 47 discloses that a Speed Notification Subsystem 42 can perform a number of

functions based upon a user's response to what functions to perform or based upon a user's response to an inquiry as to whether the user is currently driving the vehicle. (Nascimento; P. 5, Pars. 0046-0047.) In either case, the user is in the available in the vehicle and responds to the inquiry. In contrast, Nascimento does not teach performing the functions based upon acquiring an ignition off status. Therefore, the cited combination does not teach or suggest periodically *storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status.*

Therefore, because the proposed combination of Nascimento and Heyward does not teach or render obvious all of the limitations of claim 30, claim 30 is patentable over the prior art. Accordingly, Applicant respectfully submits that claim 30 is not rendered obvious by the proposed combination of Nascimento and Heyward.

Claim 32, 36, and 39

The prior art relied upon by the Examiner does not disclose or render obvious the subject matter of independent claim 32. The Examiner rejected claim 32 on the basis that "[c]laim 32 is of the same scope as claims 23-24, 26, and 30." But claim 32 is not of the same scope of those claims, and the Examiner has not pointed to where in the prior art each and every claim limitation is taught or suggested, nor is each and every limitation taught or suggested in the prior art.

The previously cited references in Nascimento and Heyward do not teach or suggest *annunciating to the customer that a message is available for delivery if the server receives an ignition status indicating that the customer is available* as recited in claim 32. The Examiner has pointed to paragraph 121 as annunciating the type of communication for delivery. As explained in relation to claim 26 above, the cited paragraph does not teach or suggest annunciating to the customer that a message is available for delivery. Rather, the reference teaches that audio and video inquiries may be made by the VCM to the user for Remote Mobile Modules (RMMs) present for use with the VCM. In addition, the inquiries taught in the reference are not a result of the server receiving an ignition status indicating that the customer is available.

Likewise, the previously cited references in Nascimento and Heyward do not teach or suggest *re-sending the query to the client VCU from the server for an ignition status if no ignition status is returned from the client VCU to the server.* The Examiner has provided no reference in Nascimento and Heyward that discloses this limitation. The closest reference provided by the Examiner is paragraph 13 of Heywood. This reference, however, does not disclose storing the data packet for later annunciation to the customer as recited in claim 32. Rather, Heywood teaches that the data packet is transferred to the host system. Moreover, the data packet transfer does not occur as a result of the server acquiring an ignition off status.

Dependent claims 36 and 39 depend from claim 32. In view of the reasons articulated above, the Applicants respectfully submit that claims 32, 36, and 39 are patentable over Nascimento and Heyward.

Conclusion

In view of the foregoing, Appellant respectfully submits that the rejections of 23-27, 29-35, 37-38, and 40-44 as being anticipated by Jijina, and claims 23, 24, 26, 28, 30, 32, 36, and 39 as being unpatentable over Nascimento in view of Heyward are improper and should be overturned.

The Commissioner is hereby authorized to charge any deficiencies, or credit any overpayment associated with this appeal brief to Deposit Account No. 07-0960.

Respectfully submitted,

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(viii) Claims Appendix

1-22. (Cancelled)

23. A method for notifying a customer of a message available for delivery via a client vehicle communication unit (VCU) installed in a vehicle of the customer, the method comprising the steps of:

      establishing a connection between a server and the client VCU;

      sending a query to the client VCU from the server for an indication of whether the customer is available in the vehicle for receiving the message;

      sending a message to the client VCU for delivery to the customer if the server receives the indication that the customer is available; and

      if the server does not receive the indication that the customer is available for receiving the message, then performing any one or more of the following:

            i) sending a failed delivery message to the client VCU,

            ii) sending the message to the client for storage on the client VCU, or

            iii) retrying delivery of the message to the client VCU at a later time after a time interval.

24. The method of claim 23, wherein the indication of whether the customer is available in the vehicle for receiving the message is an ignition status.

25. The method of claim 23, wherein the message is one of the group consisting of a voice message, a facsimile (FAX), an E-mail message, and a transfer of data.

26. The method of claim 23, wherein the step of sending a message to the client VCU for delivery to the customer further comprises annunciating to the customer the type of message available for delivery.

27. The method of claim 23, wherein the step of sending a message to the client VCU for delivery to the customer occurs after the vehicle ignition is turned on if the indication that the customer is available is not received by the server.

28. The method of claim 23, further comprising the steps of periodically sending a query to the client VCU from the server if the server fails to receive the indication that the customer is available in response to previous queries.

29. The method of claim 23, wherein sending a message to the client VCU for delivery to the customer includes broadcasting an audible message to the customer inside the vehicle.

30. The method of claim 23, further comprising the step of storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status.

31. The method of claim 30, further comprising the step of sending a code to the client VCU from the server representative of the message for later annunciation.

32. A method for delivering a message for a customer from a server to a client vehicle communication unit (VCU) installed in a vehicle of the customer, the method comprising the steps of:

      establishing a connection between a server and the client VCU;

      sending a query to the client VCU from the server for an ignition status as an indication of whether the customer is available in the vehicle for receiving the message;

      re-sending the query to the client VCU from the server for an ignition status if no ignition status is returned from the client VCU to the server; and

      annunciating to the customer that a message is available for delivery if the server receives an ignition status indicating that the customer is available.

33. The method of claim 32, wherein the step of annunciating to the customer that a message is available for delivery further comprises annunciating the type of communication available for delivery.

34. The method of claim 32, wherein the step of annunciating to the customer that a message is available for delivery occurs after the vehicle ignition is turned on if no ignition status indicating that the customer is available is received by the server.

35. The method of claim 32, wherein annunciating the communication includes broadcasting an audible message to the customer inside the vehicle.

36. The method of claim 32, further comprising the step of sending an IGNITION ON message to the server from the client VCU when the ignition mode changes from an off mode another mode.

37. The method of claim 32, further comprising the step of storing a message for later annunciation to the customer on the client VCU upon the server acquiring an IGNITION OFF status.

38. The method of claim 37, further comprising the step of sending a code to the client from the server representative of the message for later annunciation.

39. The method of claim 32, wherein the customer initiates delivery of the message with a verbal command.

40. The method of claim 32, further comprising the step of delaying delivery of the message to client VCU upon acquiring an IGNITION OFF status.

41. The method of claim 32, further comprising the step of storing the message at the server upon acquiring an IGNITION OFF status.

42. A method for notifying a customer of a message available for delivery via a client vehicle communication unit (VCU) installed in a vehicle of the customer, the method comprising the steps of:

    attempting to establish a connection between a server and the client VCU;

    if the connection was not established, then performing any one or more of the following:

        i) retrying to establish a connection between the server and the client VCU, or

        ii) storing a failed delivery message;

    if the connection between the server and the client VCU is established, then sending a query to the client VCU from the server for an ignition status as an indication of whether the customer is available in the vehicle for receiving the message; and

    if the server receives an ignition status indicating that the customer is available, then sending a message to the client VCU for delivery to the customer.

43. The method of claim 42, wherein the step of sending a message to the client VCU for delivery to the customer further comprises sending ring tones to the client VCU.

44. The method of claim 42, wherein the step of sending a message to the client VCU for delivery to the customer further comprises the customer initiating delivery of the message to the customer.

(ix) Evidence Appendix

None.

(x) Related Proceedings Appendix

None.